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Equal Employment Opportunity Commission v. Dee's Inc., d/b/a Dee's Family Restaurants

Judge Paul G. Cassell

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Equal Employment Opportunity Commission v. Dee's Inc., d/b/a Dee's Family Restaurants

Keywords

EEOC, Dee's Inc., Dee's Family Restaurants, 2:05CV00282 PGC, Consent Decree, Sexual Harassment, Retaliation, Hostile Work Environment, Female, Sex, Termination, Service, Employment Law, Title VII

Mary Jo O'Neill Az #005924
C. Emanuel Smith Ms #7424
Sally C. Shanley Az # 012251
**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Phoenix District Office**
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012
Telephone: (602) 640-5032

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Dee's, Inc., d/b/a Dee's Family
Restaurants

Defendant.

2:05CV00282 PGC

CONSENT DECREE

RECEIVED CLERK

AUG 18 2005

U.S. DISTRICT COURT

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 22 2005

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

RECEIVED

AUG 18 2005

OFFICE OF
JUDGE PAUL G. CASSEL

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Dee's Inc., ("Dee's" or "Defendant") to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Complaint, the Commission alleged that Ms. Dutweiler, Ms. Bonnell, Ms.

Gallegos and other female employees were discriminated against by Dee's, Inc. when they were sexually harassed and subjected to a sexually hostile work environment. In addition, the Commission alleges that Ms. Bonnell was retaliated against because she opposed the harassment and was terminated. In the Complaint, the Plaintiff Intervenors alleged similar claims.

The Parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This Decree resolves all claims of the Commission and Plaintiff Intervenors against Defendant, including back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs arising out of the issues in this lawsuit.

INJUNCTION

2. Dee's, and its officers, directors, successors, assigns and all persons in active concert or participation with it, both at the time that this Decree becomes effective and for the duration of this Decree, with respect to any business operations in the state of Utah as defined in paragraph 2 above, are permanently enjoined for the duration of the Decree from: (a) sexually harassing any employee; (b) harassing any employee because of his or her sex; and (c)

retaliating against any employee because he or she: (i) opposes or opposed discriminatory practices made unlawful by Title VII; (ii) files or filed a charge of discrimination or assists, assisted, participates, or participated in the filing of a charge of discrimination; or (iii) assists, assisted, participates, or participated in an investigation or proceeding brought under the Federal or State laws prohibiting discrimination or retaliation.

MONETARY RELIEF

3. Judgment is entered in favor of the Commission and Plaintiff Intervenor and against Defendant in the total amount of \$60,000.00.

4. The names of the class members and their respective monetary awards are set forth in Exhibit A, attached hereto and incorporated herein by reference.

5. The settlement amounts shall be paid within fifteen (15) days of Entry of this Decree.

6. Defendant, or its agent, shall pay the settlement amount separately to each class member and John Black, Esq. by check. The checks, cashier's checks, or money orders shall be made payable to each class member and mailed by Defendant or its agent to John Black, Esq. Within three business days of the issuance of the checks, Defendant, or its agent, shall submit a copy of each check and related correspondence to the Regional Attorney, United States

Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

7. Defendant or its agent will issue United States Internal Revenue Service Form 1099 to each person identified in Exhibit A for each tax year during which payments are made.

OTHER RELIEF

8. Defendant shall expunge from the personnel files of such class member: (a) all references to the charge of discrimination filed against Defendant that formed the basis of this action; (b) all references to the participation of any class member in this action; (c) any derogatory document which relates to complaints or investigation of complaints of sexual harassment; and (d) any documents reflecting the termination or constructive discharge of any class member.

9. Defendant shall institute and carry out policies and practices that help assure a work environment free from sexual harassment of its employees and that allow employees to raise concerns or complaints without retaliation about matters, whether alleged, perceived or actual, made unlawful by Title VII. To assist Defendant in its efforts to assure a work environment free of sexual harassment and retaliation, Defendant shall take the actions provided in paragraphs eleven through twenty of this Decree.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

10. Defendant shall post for the duration of this Decree, in a prominent place frequented by its employees at its facilities, the Notice attached as Exhibit B. The Notice shall be posted in both English and Spanish if the company engages Spanish speaking employees who are not fluent in English. The Notice shall be the same type, style and size as set forth in Exhibit B.

11. Defendant shall provide training on gender and sexual harassment and retaliation, according to the following terms:

A. Defendant shall retain a qualified individual to provide annual training seminars and will include written materials and question and answer sessions, but in no event shall be less than two hours in length. Said trainings shall begin no less than three months after the entry of this Decree. The subsequent training shall be offered in no less than eight (8) months.

B. All Defendant employees, supervisors, manager, owners, and officers shall be required to attend and register when they attend a seminar-training session. The registry of attendance shall be retained by Defendant for the duration of this Decree.

C. The seminars shall include (1) the subject of what constitutes gender and sexual harassment and retaliation; (2) that Title VII is violated by gender and sexual harassment and retaliation in hiring, firing, compensation,

assignment, or provision of other terms, conditions or privileges of employment; (3) how to prevent gender and sexual harassment and retaliation; (4) how to provide a work environment free from gender and sexual harassment and retaliation; and (5) to whom and by what means employees may complain if they feel they have been subjected to gender or sexual harassment or retaliation in the workplace.

D. The training sessions shall be attended by Defendant's Executive Officers and at such sessions the CEO shall communicate in verbal or written form the importance of maintaining an environment free of sexual harassment and retaliation, the Defendant's policy in regard to sexual harassment and retaliation the severe consequences faced by supervisors, managers and employees of Defendant who (1) commit acts of gender or sexual harassment or retaliation; (2) allow sexual or gender harassment or retaliation to occur in the workplace; or (3) fail to investigate and take seriously complaints of sexual harassment; and that violation of such policy will result in discipline up to and including termination. It will further be explained that managers and supervisors will be evaluated, in part, on their enforcement of sexual harassment policies and laws and sexual harassment complaints.

12. Entities subject to the provisions of this Decree shall notify the EEOC Regional Attorney of the Phoenix District Office of the date and time of training(s)

required in Paragraph 11. The Commission, with Defendant's approval and reasonable notice, may designate Commission representatives to attend and participate in the seminar-training sessions, and the representatives shall have the right to attend and fully participate in the sessions.

13. Within thirty (30) days of the entry of this Decree, Defendant shall review and revise, if necessary, its written policy concerning gender and sexual harassment and retaliation to conform with the law. Within thirty (30) days of such review and/or revision, the policy shall be submitted to the Regional Attorney of the Phoenix District Office of the EEOC at the address provided in paragraph seven above. This written policy must include at a minimum:

A. A strong and clear commitment to a workplace free of gender and sexual harassment;

B. A clear and complete definition of gender and sexual harassment, with many relevant examples;

C. A clear and strong encouragement of persons who believe they have been harassed to come forward;

D. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;

E. A promise of maximum feasible confidentiality for persons who believe that they have been harassed;

F. An assurance of non-retaliation for persons who believe they have been sexually harassed, and for witnesses;

G. That harassment by all persons, including management officials, supervisors, vendors, suppliers, third parties, and customers, is prohibited and will not be tolerated;

H. The identification of specific individuals, internal and external to Defendant, with their telephone numbers, to whom employees who have been harassed can report the harassment, including a written statement that the employee may report the harassment to designated persons outside of their chain of management to the extent that it is feasible in view of the size of the company;

I. Assurances that Defendant will investigate harassment allegations promptly, fairly, reasonably and effectively, using appropriate investigators, and that appropriate corrective action will be taken by Defendant to eradicate the sexual harassment;

J. These policies shall be transmitted to Defendant employees within thirty days after the resumption of business operations by any entity to which this Decree applies. Subsequently, these policies shall be distributed to all new employees of Defendant when hired and reissued to each employee once a year for the term of this Decree. These policies also shall be posted in both

English and Spanish, if the Company employs Spanish speaking employees who are not fluent in English, in a prominent place frequented by the employees.

14. Defendant shall institute a procedure to evaluate supervisors, managers, and applicable human resources personnel on their performance in responding to complaints of gender or sexual harassment by Defendant's employees. The failure of such an employee to enforce the sexual harassment policy shall result in disciplinary action.

15. Defendant shall promptly and appropriately investigate all complaints of gender and sexual harassment by its employees. The investigation must include a finding of whether gender or sexual harassment occurred, a credibility assessment, if necessary; interviews of all potential victims and witnesses identified; and concurrent notes of the investigation.

16. Defendant shall take immediate appropriate corrective action including but not limited to disciplining any harasser, and eradicating the gender or sexual harassment.

17. Defendant shall not retain documents related to the investigation of sexual harassment complaints in any of the complainant's personnel files. All disciplinary actions taken against employees for violation of Defendant's sexual harassment policy shall be retained in the harasser's personnel file. In those cases in which no conclusion could be reached on the allegations, the

investigation documents shall be retained either in the alleged harasser's file, or in an investigation file.

18. Within sixty (60) days of the training referenced in Paragraph 11, Defendant shall inform its vendors and suppliers who have significant personal contact with its employees of its harassment policy and that failure to conform to the policy may result in prohibitions from conducting business with Defendant on its premises or at its work sites.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

19. Beginning six months after the entry of this Decree, and at the end of the year, for the duration of the Decree the following information, upon request, shall be provided to the Commission:

A. A copy of the revised policy required in paragraph fifteen of this Decree, in both English and Spanish, if the Company employs Spanish speaking employees who are not fluent in English.

B. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of sexual harassment or retaliation.

C. The name, address, position, and telephone number of any individual who has brought allegations of sexual harassment and/or retaliation against Defendant personnel, including, but not limited to, management officials,

vendors, agents, employees and/or customers, whether the allegations are communicated through local or national complaint-reporting mechanisms, whether telephonic, recorded, verbal, oral, formal or informal, during the six months, and thereafter every year, preceding the report to the EEOC. The nature of the complaint, investigatory efforts made by Defendant, and corrective action taken, if any, also shall be specified.

D. The registry of persons attending the training seminars required in paragraph thirteen of this Decree and the date(s) thereof, and a list of current personnel employed by Defendant on the days of the seminar-training sessions.

E. Confirmation that (i) the Notice required in paragraph eleven of this Decree was posted in both English and Spanish, if the Company employs Spanish speaking employees who are not fluent in English and the locations where it was posted, (ii) the policies required in paragraph sixteen were distributed to each current and new employee of Defendant, in both English and Spanish if required by this agreement, and posted, and (iii) the expungement from the class members' personnel files required in paragraph ten of this Decree took place if applicable, the date of the expungement, and the specific documents expunged if applicable.

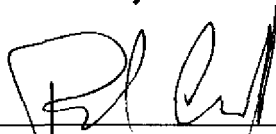
COSTS AND DURATION

20. Each Party shall bear its costs and attorney's fees incurred as a result of this action.

21. The duration of this Decree shall be one year from its entry. This Court shall retain jurisdiction over this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this Decree. Should the Court determine that defendant has not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered. Absent extension, this Decree shall expire by its own terms at the end of 12 months from the date of entry, without further action by the Parties.

22. The Parties agree to entry of this Decree and judgment subject to final approval by the Court.

DATED this 22nd day of August, 2005.



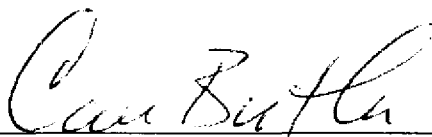
The Honorable PAUL G. CASSELL
United States District Federal Court Judge

APPROVED AND CONSENTED TO:
DEE'S, INC.



By: 

Its: 



CASS C. BUTLER
MICHAEL D. STANGER

Attorneys for Defendant

ERIC S. DREIBAND
General Counsel

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

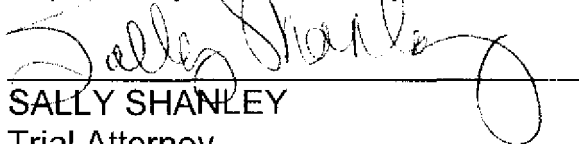
1801 L Street, N.W.
Washington, D.C. 20507



MARY JO O'NEILL
Regional Attorney

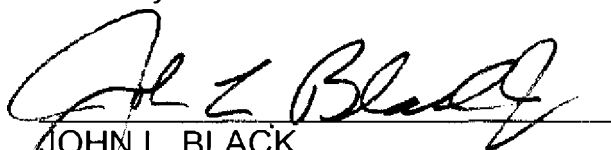


C. EMANUEL SMITH
Supervisory Trial Attorney



SALLY SHANLEY
Trial Attorney

Phoenix District Office
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012
Attorneys for Plaintiff



JOHN L. BLACK
Suite 500-Clift Building
Ten West Broadway
Salt Lake City, Utah 84101
Attorney for Plaintiff Intervenors

EXHIBIT A

Breeanna Bonnell	\$ 8,884.44
Karanette Gallegos	\$16,448.22
Dianne Dutweiler	\$14,687.34
John Black	<u>\$19,980.00</u>
TOTAL	\$60,000.00

EXHIBIT B

NOTICE TO ALL EMPLOYEES OF DEE'S

This Notice is posted pursuant to a Consent Decree entered into between the Equal Employment Opportunity Commission and Dee's Family Restaurants to resolve the case of *EEOC v. Dee's Family Restaurants*, CIV 2:05CV00282 PGC.

Sexual Harassment and retaliation in the work place is against federal law. Under Title VII of the Civil Rights Act of 1964, it is unlawful for an employer to discriminate on the basis of sex, to sexually harass an employee or to retaliate against a person for participating or opposing discrimination.

If you believe you have been subjected to sex discrimination or retaliation during the course of your employment with Dee's you have the right to seek assistance from:

(1) The United States Equal Employment Opportunity Commission (the EEOC) at either the Phoenix District Office, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012-2504, (602) 640-5000, TTY

or

(2) The Utah Anti-Discrimination Division 160 East 300 South, Post Office Box 146630, Salt Lake City Utah 84114, (801) 530-6801.

You have the right to file a charge with the EEOC or the UADD if you believe you are being subjected to sex discrimination.

It is also unlawful for any management official or employee of Dee's to discriminate by retaliation against an individual because you have opposed an act or practice made unlawful by Title VII, or because you made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under the Title VII. It is also unlawful for any management official or employee of Dee's to coerce, interfere, intimidate or threaten any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Title VII. If you believe any acts to retaliate, coerce, intimidate, or threaten you have been made, you should contact the EEOC or UADD at the addresses and numbers listed above.

ADVIERTA A TODOS EMPLEADOS DE DEE'S

Esta Aviso se anuncia según un Consentimiento Decreta entrado en entre la Comisión para la Igualdad de Oportunidades en el Empleo Dee's Family Restaurants para resolverse Restuarants el caso de EEOC V. La Familia de Dee Restuarants, CIV 2:05CV00282 PGC.

El acoso sexual y la venganza en el lugar del trabajo están contra la ley federal. Bajo el Título VII del Acto Civil de Derechos de 1964, es ilegal para un empleador para discriminar por el sexo, para acosar sexualmente a un empleado o para vengar contra una persona para la discriminación de participar u oponer.

Si usted cree que usted ha sido sujeto a la discriminación por cuestión de sexo o la venganza durante su empleo con Dee's es usted tiene el derecho de buscar ayuda de:

(1) Los Estados Unidos Comisión para la Igualdad de Oportunidades en el Empleo (el EEOC) en o la Oficina del Distrito de Phoenix, 3300 Avenida Central del norte, la Serie 690, Phoenix, Arizona, 85012-2504, (602) 640-5000, TTY o (2) El Utah la División Anti Discriminación 160 Este 300 al sur, el Apartado de correos 146630, la Ciudad de Salt Lake Utah 84114, (801) 530-6801.

Usted tiene el derecho de archivar una carga con el EEOC o el UADD si usted cree que usted es es sujeto a la discriminación por cuestión de sexo.

Es también ilegal para cualquier funcionario de la administración o el empleado de Dee's es de discriminar por la venganza contra un individuo porque usted se ha opuesto un acto o la práctica hechos ilegales por el Título VII, o porque usted hizo una carga, testificó, ayudó o tomó parte en cualquier manera en una investigación, en avanzar, o en la vista bajo el Título VII. Es también ilegal para cualquier funcionario de la administración o el empleado de Dee es de obligar, intervenir, intimidar o amenazar cualquier individual en el ejercicio o el placer de, o por motivo de su ejercitó o gozó, o por motivo de su ayudó o alentó a cualquier otro individuo en el ejercicio o el placer de, cualquier correcto otorgó o protegió por el Título VII. Si usted cree que cualquiera actúa para vengar, obligar, intimidar, o para amenazarle ha sido hecho, usted debe contactar el EEOC o UADD en las direcciones y números listaron arriba.